

DOCKET NO.: FBT-CV-15-6048078-S : SUPERIOR COURT  
JONATHAN SHAPIRO : J. D. OF FAIRFIELD  
VS. : AT BRIDGEPORT  
FRANK DELBOUNO, JR. and :  
CITY OF BRIDGEPORT : NOVEMBER 16, 2016

**DEFENDANTS' REQUEST FOR LEAVE TO FILE  
AMENDED ANSWER AND SPECIAL DEFENSES**

Pursuant to Practice Book Section 10-60(a)(3), the undersigned Defendants, Frank Delbouno, Jr. and the City of Bridgeport, hereby request leave to amend their February 2, 2015 Answer and Special Defense based upon information and facts subsequently developed through discovery including the Plaintiff's subsequent 2016 disclosure of a cell phone video taken by the Plaintiff as he approached and drove into the intersection. Said cell phone video of the involved motor vehicle accident reflected that at the time of the intersection collision, the Plaintiff's light was green, the Defendant Police Officer's light was red and the Defendant Police Officer's emergency siren was on, so as to indicate that the Officer was mistaken as to his previous belief – reflected in the Defendants' original February 2, 2015 Answer and Special Defense – that the Plaintiff's light was red, the Defendant's light was green, and that the Defendant's emergency siren was not yet on. Accordingly, as a

consequence, and in reliance upon, the Plaintiff's cell phone video of the accident produced in 2016, an Amendment of the Defendants' February 2, 2015 Answer and Special Defense in a manner consistent with the Plaintiff's cell phone video reflected in the attached November 2, 2016 Amended Answer and Special Defenses would appear warranted and required.

Furthermore, said Amendment will not occasion any delay in the trial, and will not prejudice, inconvenience, or create surprise for the Plaintiff who was well aware of the facts reflected in his own cell phone video, and the legal defenses that could be premised thereon, since the date he took the video on February 15, 2013, i.e., approximately three years before it was disclosed to the Defendant in 2016.

WHEREFORE, the Defendants respectfully request leave to amend their Answer and Special Defense in accordance with the attached Amended Answer and Special Defenses.

**THE DEFENDANTS:**

BY: \_\_\_\_\_/s/

**Lawrence A. Ouellette, Jr.**

Associate City Attorney

**OFFICE OF THE CITY ATTORNEY**

999 Broad Street – 2<sup>nd</sup> Floor

Bridgeport, CT 06604

Telephone: 203-576-7647

Juris No. 06192

**CERTIFICATION**

This is to certify that a copy of the foregoing was mailed via first-class mail, postage prepaid, on this 16<sup>th</sup> day of November, 2016 to all counsel and pro se parties of record as follows:

Kevin C. Shea, Esq.  
Clendenen & Shea, LLC  
400 Orange Street  
New Haven, CT 06511

\_\_\_\_\_/s/  
Lawrence A. Ouellette, Jr.

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**AMENDED ANSWER AND SPECIAL DEFENSES**

**BY WAY OF ANSWER**

**FIRST COUNT**

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. The Defendants lack sufficient knowledge or information upon which to form a belief and, therefore, leave the Plaintiff to his burden of proof.
7. The Defendants lack sufficient knowledge or information upon which to form a belief and, therefore, leave the Plaintiff to his burden of proof.
8. The Defendants lack sufficient knowledge or information upon which to form a belief and, therefore, leave the Plaintiff to his burden of proof.

9. The Defendants lack sufficient knowledge or information upon which to form a belief and, therefore, leave the Plaintiff to his burden of proof.

10. Denied.

11. The Defendants lack sufficient knowledge or information upon which to form a belief and, therefore, leave the Plaintiff to his burden of proof.

12. Denied.

13. Admitted.

14. Denied.

15. The Defendants lack sufficient knowledge or information upon which to form a belief and, therefore, leave the Plaintiff to his burden of proof.

16. Denied.

17. This Paragraph is omitted in the Complaint.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

## **SECOND COUNT**

1-23. Paragraphs 1 through 23 of the First Court are hereby incorporated by reference as Paragraphs 1 through 23 of this the Second Count.

24. Denied as the City of Bridgeport is only liable for damages if the employee is found to be negligent.

25. The Defendants lack sufficient knowledge or information upon which to form a belief and, therefore, leave the Plaintiff to his burden of proof.

## **THIRD COUNT**

1-23. Paragraphs 1 through 23 of the First Court are hereby incorporated by reference as Paragraphs 1 through 23 of this the Third Count.

24. Denied only if the employee is found to be negligent.

## **FOURTH COUNT**

1-23. Paragraphs 1 through 23 of the First Court are hereby incorporated by reference as Paragraphs one through twenty-three of this the Fourth Count.

24. The Defendants lack sufficient knowledge or information upon which to form a belief and, therefore, leave the Plaintiff to his burden of proof.

25. The Defendants lack sufficient knowledge or information upon which to form a belief and, therefore, leave the Plaintiff to his burden of proof.

### **FIFTH COUNT**

1-17. Paragraphs 1 through 17 of the First Count are hereby incorporated by reference as Paragraphs 1 through 17 of this the Fifth Count.

18. Denied.

19. Denied.

20. Denied.

### **SIXTH COUNT**

1-26. Paragraphs 1 through 23 of the First Count and Paragraphs 18 through 20 of the Fifth Count, respectively, are hereby incorporated by reference as Paragraphs 1 through 26 of this the Sixth Count.

27. Denied.

**BY WAY OF SPECIAL DEFENSES**

**FIRST SPECIAL DEFENSE AS TO COUNTS ONE, TWO, THREE AND FOUR:**

**COMPARATIVE NEGLIGENCE**

If the Plaintiff was injured and damaged in the manner and to the extent set forth in the Complaint, said injuries and damages were caused by the Plaintiff's own negligence as follows:

- 1) In that he failed to keep a proper and reasonable lookout for other motor vehicles upon the highway;
- 2) In that he failed to take proper evasive action by applying his brakes in time to avoid a collision although by a proper and reasonable exercise of his faculties he could and should have done so;
- 3) In that he engaged while operating his vehicle in a distracted driving activity by using a handheld cell phone to videotape his course of travel as he approached and entered the intersection in lieu of focusing his attention on the intersection ahead and the approaching traffic;
- 4) In that he operated his motor vehicle upon a public highway while holding in his hand and using a mobile electronic device/cell phone video camera



which resulted in the distracted driving activity that contributed to the accident, in violation of Conn. Gen. Stat. §14-296aa(b)(1);

5) In that he engaged while operating his vehicle on a public highway in a handheld cell phone activity with a mobile electronic device, not related to the actual operation of the motor vehicle, in a manner that interfered with the safe operation of such vehicle, in violation of Conn. Gen. Stat. §14-296aa(f);

6) In that he failed he operate his vehicle in a reasonable manner, with regard to the approaching traffic and use of the highway, and other prevailing conditions at said time and place in violation of Conn. Gen. Stat. §14-222;

7) In that he entered the intersection when it was not reasonably safe for him to do so, particularly in light of the imminent approach of the Defendant's emergency vehicle with lights and sirens activated;

8) In that he failed to yield the right of way to an emergency vehicle responding to an emergency with lights and sirens activated; and

9) In that he failed to yield the right of way to an emergency vehicle responding to an emergency with lights and sirens activated in violation of Conn. Gen. Stat. §14-283(e).

**FIRST SPECIAL DEFENSE AS TO COUNTS FIVE AND SIX:**

**CONTRIBUTORY RECKLESSNESS**

If the Plaintiff was injured and damaged in the manner and to the extent alleged in his Complaint, then said injuries and damages were caused, in whole or part by the recklessness of the Plaintiff in that:

- 1) He recklessly operated his vehicle in a manner that disregarded the safety of others with the consequences of his actions;
- 2) He engaged in highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger is apparent or becomes apparent as a result of the Plaintiff's action;
- 3) In that he was operating his vehicle recklessly in violation of Conn. Gen. Stat. §14-222;
- 4) In that he engaged while operating his vehicle in a distracted driving activity by using a handheld cell phone to videotape his course of travel as he approached and entered the intersection in lieu of focusing his attention on the intersection ahead and the approaching traffic;
- 5) In that he operated his motor vehicle upon a public highway while holding in his hand and using a mobile electronic device/cell phone video camera

which resulted in the distracted driving activity that contributed to the accident, in violation of Conn. Gen. Stat. §14-296aa(b)(1);

6) In that he engaged while operating his vehicle on a public highway in a handheld cell phone activity with a mobile electronic device, not related to the actual operation of the motor vehicle, in a manner that interfered with the safe operation of such vehicle, in violation of Conn. Gen. Stat. §14-296aa(f);

7) In that he failed he operate his vehicle in a reasonable manner, with regard to the approaching traffic and use of the highway, and other prevailing conditions at said time and place in violation of Conn. Gen. Stat. §14-222;

8) In that he entered the intersection when it was not reasonably safe for him to do so, particularly in light of the imminent approach of the Defendant's emergency vehicle with lights and sirens activated;

9) In that he failed to yield the right of way to an emergency vehicle responding to an emergency with lights and sirens activated; and

10) In that he failed to yield the right of way to an emergency vehicle responding to an emergency with lights and sirens activated in violation of Conn. Gen. Stat. §14-283(e).

**SECOND SPECIAL DEFENSE AS TO ALL COUNTS:**

**GOVERNMENTAL IMMUNITY UNDER CONN. GEN. STAT. §52-557(n)**

Plaintiff's claims are barred by the applicable governmental immunity under Conn. Gen. Stat. §52-557(n).

**THIRD SPECIAL DEFENSE AS TO ALL COUNTS:**

**CONN. GEN. STAT. §14-283**

The Defendant had the right of way to proceed through the red light at the intersection, with due regard to the safety of all persons and property, and after slowing down or stopping to the extent necessary for the safe operation of the vehicle, to the extent that the Defendant's police cruiser was answering an emergency call and being operated before the collision while properly and lawfully making use of an audible warning signal/device and visible or flashing revolving lights.

**THE DEFENDANTS:**

BY: \_\_\_\_\_/s/  
**Lawrence A. Ouellette, Jr.**  
Associate City Attorney  
**OFFICE OF THE CITY ATTORNEY**  
999 Broad Street – 2<sup>nd</sup> Floor  
Bridgeport, CT 06604  
Telephone: 203-576-7647  
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### **CERTIFICATION**

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